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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,852	07/31/2003	Jonnic R. Williams	004859.00044	1976
22907	7590	02/15/2006		
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			EXAMINER MAYES, DIONNE WALLS	
			ART UNIT 1731	PAPER NUMBER

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,852

Applicant(s)

WILLIAMS, JONNIE R.

Examiner

Dionne Walls Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-10,12-14 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 4,5,11,15,16 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 9-10, 12-14 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US. Pat. No. 6,082,368).

Brown discloses nearly all that is recited in the claims since it teaches a formulation of candy (corresponding to the claimed "solid bit") which includes a fine or superfine powder formed from crushed/finely ground tobacco leaves (corresponding to the claimed "powdered/pulverized tobacco") with flavoring added thereto (see col. 2, lines 29-33; col. 7, lines 42-43). While Brown may not specifically state that the flavoring which is added comprises the claimed weight percentage of peppermint, menthol and/or wintergreen/spearmint, it would have been obvious to one having ordinary skill in the art at the time of the invention since these flavors are conventionally used in many arts, including tobacco, and such flavorings are utilized in embodiments disclosed in the Brown reference (See col. 4, line 51).

Regarding claims 9 and 20, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided tobacco which is of the Virginia flue-cured variety since such is a common type of tobacco used in tobacco-based articles.

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3. Claims 6-8, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US. Pat. No. 6,082,368) in view of WO 00/15056.

While Brown may not specifically disclose that the powdered tobacco comprising its candy product has the claimed nitrosamine content, WO 00/15056 discloses a tobacco product, comprised from Virginia flue-cured tobacco leaves, which can be converted to a smokeless tobacco product which has a combined TSNA (corresponding to the claimed "collective content of NNN, NNK, NAT, NAB") as low as less than about .009 micro g/g (corresponding to the claimed "0.3/0.2/0.1 micro g/g or less") (see pages 28 and 29). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the tobacco-based (smokeless) candy product of Brown with the nitrosamine content disclosed in WO 00/15056, in order to provide a less-carcinogenic tobacco product as taught in WO 00/15056.

Allowable Subject Matter

4. Claims 4-5, 11, 15-16 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, reading "Dionne W. Mayes". The signature is fluid and cursive, with a large initial "D" and a stylized "M".

Dionne Walls Mayes
Primary Examiner
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February 8, 2006